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File No. 0 Income Tax
Legal Department
A BRANCH

Subject:—

Opinions under the
Income Tax Act 1922

R.T.E

File No 0 Income Tax/50 555-A

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C O N T E N T S

Legal Department File No. O. Income Tax/50.

Sr. No.	R.L./O.No.	Subject	Pages.
	O. Income Tax 1950	Opinions under the Income Tax Act, 1922.	
1.	~~7997~~ 13-6-50	Section 46(2). Whether the Collector can purchase property for nominal bid where such property is put to auction for recovery of income tax dues.	1-3.
2.	~~9692~~ 11-7-50	Section 46(2). The recovery of the arrears of income tax dues from an assessee on the strength of a certificate issued by the income tax officer under.	5.
3.	~~9808~~ 4-7-50.	Section 46(2). Recovery of arrears of income tax from one Asim Kazi.	7-9.
4.	~~10522~~ 28-12-50	Recovery of representation is not known to Mahomedan law. estates of a deceased person devolves upon his hiers at the moment of his death.	11-13.

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Office of the R.L.A.

Indian Income Tax Act, 1922.
Section 46(2).
Bombay Land Revenue Rules.
Rule 129(3).

It appears that the R.D. proposes to issue a draft G.R. to the following effect :-

> "Government is pleased to direct that in cases in which no Bids are offered for the purchase of property which is put to auction for recovery of income tax dues, the Collector should intimate to the officers concerned of the Income Tax Department the circumstances of the case and at the sametime ask them to state whether they are willing to purchase the property at nominal bids. If they agree to and pay the nominal bid amount, the property will vest in them after it is purchased. However, if they do not want to purchase the property, they should be asked to indicate to the Collector any other method of recovering their dues from the defaulters concerned. If the Income Tax Department have no objection to the Collector purchasing the property on nominal bid out of Provincial revenue, and the Collector considers that profitable or advantageous disposal of the property will be possible in the future, the Collector should purchase the property on nominal bid and pay the amount out of the State revenue, treat the property as vesting in the State Government and follow the accounting procedure which is followed when such property is purchased for the realisations of the State Government dues."

The Commissioner, Central Division, considers it unjust or inequitable for the State Government to make any business of buying and later on reselling such land when such a step is not considered desirable or useful by the creditor Union Government represented by the Income Tax authorities at whose instance the property is put to sale. The Revenue Department is of the opinion that there is nothing immoral or which savours of private business, if the State Government purchases property on behalf of Union Government on nominal bid and disposes of it later when there is suitable opportunity and further such a step would not be illegal. R.L.A. is requested to advise.

It may at the outset be stated that, altough sub-rule (3) of rule 129 of the Land Revenue Rules empowers the Collector or his nominee tobid at the auction and to purchase land or other property for a nominal Bid incases where no proper

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bids are forthcoming, recently in an appeal from Khandesh, the High Court has emphasised that due notice of the exercise of such powers by the ~~xxxxxxx~~ Collector should be given to that judgment debtor for which purpose a condition to that effect should be mentioned in the auction sale itself. This point should be brought out in the G.R. so that it should form one of the terms and conditions of the auction sale.

Under sub-section (2) of section 46 of the Income Tax Act, the arrears can be recovered from the assessee as arrears of land revenue and in recovering ~~such arrears~~ such a rears it would be open to the State Government to take all steps warranted by law. Consequently, the purchase of property even for a nominal bid would be legally feasible. When the arrears of the income-tax are to be recovered for Union Government, it would ordinarily be for that Government to purchase the property for a nominal bid when no bids are forthcoming. But if the Union Government does not for any reasons ~~xxxxxx~~ so to do and if the Collector finds that the people had formed a rigg to defeat the auction sale, there would be no objection, legal or moral, to the State Government purchasing the property for a nominal bid.

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Remembrancer of Legal Affairs.

U.R. to R.D., No. 7297; dated the 12th June, 1950.

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This Department is not aware of any law or arrangement under which the Collector of Bombay can issue a Recovery Certificate to a Collector in Saurashtra. It is however understood that special provisions are being made in this behalf. The Collector of Bombay may therefore be asked to seek the advice of the Ministry of Finance, Government of India.

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U.R. to R.D., No. 9683; date the 11th July, 1950.

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Income-tax Act, 1922, section 46(3). Recovery of arrears of income-tax from one [illegible]

Under section 46(3) of the Income-tax Act, the amount of the arrears due from the assessee is recoverable as if it were an arrear of land revenue. The proviso to that section provides that, without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908, a civil court has for the purpose of the recovery of an amount due under a decree. It is clear from this provision that the Collector can exercise all the powers of the civil court for the purpose of recovering income tax. In the present case the Collector resorted to this provision for the purpose of recovering the income tax arrears. He could therefore, exercise all the powers of a civil court for that purpose. The powers of the civil in this respect are contained in Order XXI in the First Schedule to the Civil Procedure Code. Under Rule 89 of that Order, an application to set aside a sale can be made by a person either owning such property or holding an interest therein by virtue of a title acquired before such sale. Under this provision an application set aside the sale could lie only to the civil court which power could be exercisable by the Collector in the present case. No such application was made to the Collector for setting aside the sale.

Nor is the person who has moved Government to set aside the auction sale one who is either owning the property or holding an interest in it. He has, therefore, no locus standi for making such application. Besides, the

application would lie only to the Collector; and Government has no power of interference. As the Collector proceeded to recover the amount as an amount due under a decree, the question of Government interfering and setting aside the sale in exercise of the powers vested in it under the Bombay City Land Revenue Act, 1876, does not arise.

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U.R. to R.D., No. 2808; dated the 4th July, 1950.

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The theory of representation is not known to the Mahomedan law. Under it-s provisions the estate of a deceased person devolves upon his heirs at the moment of his death. The estate vests immediately on each heir in proportion to the share ordained by the Mahomedan law. As the interest of each heir is separate and distinct, one of a number of heirs cannot be treated as representing the others . (see Sakina Begum vs. Shahar Banoo (1935) 10 Luck. 443 at page 458 Mulla's Mahomedan Law p. 32). The property isn the present case cannot terefore be regarded as the joint property of the familyin the sense in which it is, understood under the Hindu Law. All the heirs could be treated as tenants-in-common holding specific shares in the property. Consequntly ~~xxxx